IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/04/2003

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THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.7772 of 1998
and W.P.Nos. 7773 to 7782 of 1998

G.S.Krishnan .. Petitioner
in WP:7772/98

M.Rajaratnam .. Petitioner
in WP:7773/98

K.L.Sethuraman .. Petitioner
in WP:7774/98

S.Rethinam .. Petitioner
in WP:7775/98

G.Rajan .. Petitioner
in WP:7776/98

G.Jayaraman .. Petitioner
in WP:7777/98

A.Thiruchiluvai .. Petitioner
in WP:7778/98

P.Arul .. Petitioner
in WP:7779/98

S.Arunachalam .. Petitioner
in WP:7780/98

M.Veluswamy .. Petitioner
in WP:7781/98

K.Athinarayanaswamy .. Petitioner
in WP:7782/98

-Vs-

1. The Union of India rep. by
the Controller General of Accounts
Ministry of Finance
Department of Expenditure

Loknayak Bhavan, New Delhi.

2. The Chief Controller of
Defence Accounts (Pension)
Allahabad.

3. The Defence Pension Disbursing
Office, Annexe Building, 506
Anna Salai, Chennai-18.

4. The Council of Scientific and
Industrial Research, Anusandhan
Bhavan, Rafi Marg, New Delhi-1. .. Respondents
1 to 4 in all
Writ petitions
5. The Senior Manager
Canara Bank, Karaikudi-630 001. .. respondent 5
in WP:7772/1998
WP:7774/1998,
WP:7776/1998,
WP:7777/1998,
WP:7779/1998,
WP:7780/1998 &
WP:7781/1998

6. The Senior Manager
Syndicate Bank of India,
Karaikudi. .. respondent 5
in WP:7773/1998

7. The Senior Manager
State Bank of India, Lalgudi .. respondent 5
in WP:7775/1998
& WP:7778/1998

8. The Senior Manager
Canara Bank, Sathur .. respondent 5
in WP:7782/1998

PRAYER: Petitions under Article 226 of the Constitution of India for issue of
a writ of Mandamus as stated therein.

For Petitioners : Mr.K.R.Vijayakumar

For Respondents : Mr.K.Veeraraghavan, ACGSC
1 to 4
For Respondent 5 : Mr.R.T.Doraisamy
in WP:7775 & 7778/98

For Respondent 5 : Mr.K.R.Ashok
in WP:7772, 7774, for Mr.M.Balachander

7776, 7777, 7779,
7780 to 7782/1998

For Respondent 5 : No appearance
in WP:7773/1998

:ORDER

All the writ petitioners are, admittedly, ex-servicemen who after their discharge from defence service joined in the Central Electro Chemical Research Institute (CECRI), Karaikudi, except in the case of the petitioner in W.P.No.7772 of 1998, who during his service in the Central Electro Chemical Research Institute (CECRI), Karaikudi was transferred to Central Leather Research Institute (CLRI), Chennai. Concededly, both the Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) are a constituent unit of the Council of Scientific and Industrial Research (CSIR), New Delhi, and the fact remains that some of the writ petitioners have retired on superannuation and some of them continue to be in service.

2. Even though the petitioners were paid Dearness Relief on pension, as per their service in the defence, the said Dearness Relief on pension was subsequently recovered quoting Rule 55A(ii) of the Central Civil Services (Pension) Rules (hereinafter referred to as the "Rules"), which reads as follows:

"Rule 55A: Dearness Relief on Pension/Family Pension
(i) ...
(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including

permanent absorption in such Corporation/Company/Body/Bank, he shall not eligible to draw Dearness Relief on pension/family pension during the period of such re-employment)"

3. Alleging that the reliance placed by the respondents on Rule 55A(ii) of the Rules, for recovery of Dearness Relief on Pension paid to the petitioners for their service in the defence, is illegal, arbitrary and violative of Article 14 of the Constitution of India, as unequals are being treated as equals, the petitioners seek a writ of Mandamus to pay the Dearness Relief on pension to the petitioner from time to time and also to refund the amount already recovered from the pension.

4.1. According to the learned counsel for the petitioners, the said Rule 55A(ii) of the Rules is not applicable to the case of the petitioners, as both the Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) are a constituent unit of the Council of Scientific and Industrial Research (CSIR), which is not coming within the definition of "State" under Article 12 of the Constitution of India.

4.2. Mr.K.R.Vijay Kumar, learned counsel for the petitioners,

contends that the representations made by the petitioners objecting the recovery of Dearness Relief on pension were also not considered by the respondents.

5.1. During the course of the hearing, Mr.K.Veeraraghavan, learned Additional Central Government Standing Counsel appearing for the respondents 1 to 4, produced before this Court the proceedings of the Government of India, Ministry of Defence, which reads as follows:

"No.7(1)/95/D(Pens/Sers)
Government of India
Ministry of Defence
New Delhi, dated 30th November 2000

To:

The Controller of Defence Accounts
New Delhi-110066.

Subject:- Recovery of over-payment of Dearness Relief from reemployed ex-servicemen/family pensioners.

Sir,

I am directed to refer to the Office of the CGDA U.O.No.5137/AT-P, dated 17.4.2000 regarding grant of Dearness Relief to ex-servicemenVacation of Stay Orders. The issue of non-realisation of amount of Dearness Relief already paid to re-employed ex-servicemen has been examined in consultation with LA (Def) and DP & PW. It has been decided that Dearness Relief already paid in cases where the pensioner or the family pensioner is no longer alive may be written off but in respect of all others, recovery is inescapable as otherwise it would tantamount to discrimination amongst pensioners and may not be legally tenable.

2. It is requested that necessary instruction may be issued for initiating the recovery of over-payment of Dearness Relief from reemployed defence pensioners expeditiously. Wherever Court/CAT Stay exists against the recovery of over-payment of Dearness Relief, Govt. Counsel and other concerned authorities may be advised to take necessary action to get the stay vacated before resorting to recovery.

Sd/-
(I.K.Haldar)
Under Secretary to the Govt. of India"

In the said decision, the Government of India, Ministry of Defence, has decided that Dearness Relief already paid in the cases where the pensioner or the family pensioner is no longer alive may be written off, but in respect of all others recovery is inescapable as otherwise it would tantamount to discrimination amongst pensioners and may not be legally tenable.

5.2. The learned Additional Central Government Standing Counsel appearing for the respondents 1 to 4, also contends that the Central Electro Chemical Research Institute (CECRI) of Central Leather Research Institute (CLRI) is a constituent unit of the Council of Scientific and Industrial Research (CSIR), which is a Central Autonomous Body, under the Government of India, and therefore, the provisions contained vide Rule 55A(ii) of the Rules is applicable to the petitioners.

6. The learned counsel for the fifth respondents contend that they are only disbursing agencies who are obliged to follow the directions of respondents 1 to 4.

7. I have given careful consideration to the propelling and repelling contentions of the parties.

8. The fact that Dearness Relief on pension paid to the petitioners, for their service in the defence, was recovered by the respondents placing reliance on Rule 55A(ii) of the Rules, is not disputed.

9. Rule 55A(ii) of the Rules is applicable only in the case of exservicemen who are re-employed under the Central or State Government. It is a settled law that Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) which are a constituent unit of the Council of Scientific and Industrial Research (CSIR) is not coming within the definition of "State" under Article 12 of the Constitution of India, vide SABHAJIT TEWARY Vs. UNION OF INDIA reported in (1975) 1 SCC 485 = AIR 1975 SC 1329, which was also subsequently confirmed by the Seven Judges Bench of the Apex Court in PRADEEP KUMAR BISWAS Vs. INDIAN INSTITUTE OF CHEMICAL BIOLOGY reported in (2002) 5 SCC 111. I am, therefore, of the considered opinion that Rule 55A(ii) of the Rules is not applicable to the petitioners.

10. That apart, while considering the claim of similarly placed exservicemen with respect to the Dearness Relief on the pension for their service in the Defence, the Apex Court by order dated 9.9.1996 in Review Petition No.1002 of 1995 in Civil Appeal No.1809 of 1998, observed that the Union of India should apply its mind to the question whether ex-servicemen could be treated differently from others, in so far as the service conditions of the ex-servicemen are said to be not attractive, and also desired that Central Government should sympathetically consider the question of non-realisation of amount already disbursed to the re-employed ex-servicemen.

11. In spite of the clear indication of the Apex Court in their order dated 9.9.1996 in Review Petition No.1002 of 1995 in Civil Appeal No.1809 of 1998, I am unable to understand how the respondents have taken a decision on 30.11.2000 to the effect that Dearness Relief on pension already paid in cases where pensioner or the family pensioner is no longer alive may be written off, but in respect of all others, recovery is inescapable. As the decision dated 30.11.2000 appears to have been taken without reference to the order of the Apex Court dated 9.9.1996 in Review Petition No.1002 of 1995 in Civil Appeal No.1809 of 1998, suffice it to permit the petitioners to make further representations bringing the observation of the Apex Court dated 9.9.1996 in

Review Petition No.1002 of 1995 in Civil Appeal No.1809 of 1998 to the notice of the respondents within thirty days from the date of receipt of copy of this order, and to direct the respondents to pass appropriate orders in the light of the said order of the Apex Court within sixty days from the date of receipt of the representations of the petitioners.

These writ petitions are ordered accordingly. No costs.
Consequently, W.M.P.Nos.11825 to 11835 of 1998 and W.P.M.P.Nos.24315 to 24324 of 2001 are closed.

Index : Yes
Internet : Yes

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To:

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